

The Commonwealth of Massachusetts



Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

October 26, 1982

You inquire who will be responsible for collection and payment of the Massachusetts sales or use tax in the following circumstances

("Company A") is a computer manufacturer engaged in business in Massachusetts within the meaning of General Laws Chapter 64H, Section 1(5).

("Company B"), an Ohio corporation, will purchase a computer from Company A for resale to a customer in Massachusetts. The computer will be shipped directly from Company A to the Massachusetts customer by common carrier.

You state that Company B has no contact with Massachusetts, although some of its customers are located in the Commonwealth.

General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts by any vendor; "sale at retail" does not include sales for resale in the regular course of business (G.L. c. 64H, s. 1(13)).

Chapter 64I, Section 2 imposes an excise on the storage, use or other consumption in Massachusetts of tangible personal property purchased from any vendor for storage, use or other consumption in Massachusetts; "storage, use or other consumption" does not include the sale of tangible personal property in the regular course of business or the retention of tangible personal property for sale in the regular course of business (G.L. c. 64I, s. 1(4), (5)).

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Except where a seller takes a resale certificate in good faith from a purchaser who is a registered Massachusetts vendor, two presumptions arise: it is presumed that all gross receipts of a vendor from Massachusetts sales are from sales subject to tax (G.L. c. 64H, s. 8), and it is presumed that tangible personal property sold by any person for delivery in Massachusetts is sold for storage, use or other consumption in Massachusetts (G.L. c. 64I, s. 8).

Section 1(13) of Chapter 64H provides:

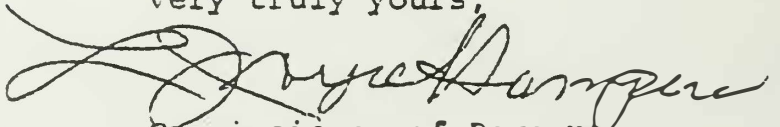
"The delivery in the commonwealth of tangible personal property by an owner or former owner thereof, or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the commonwealth, is a retail sale in the commonwealth by the person making the delivery. He shall include the retail selling price of the property in his gross receipts."

Based on the foregoing, it is ruled that:

1. If Company B is engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), it must register as a Massachusetts vendor and collect and pay over the sales or use tax on its sale of the computer, based on the retail selling price it charges its customer; in such case Company B may give Company A a Massachusetts resale certificate in lieu of paying a tax on its purchase from Company A.

2. If Company B is not engaged in business in Massachusetts within the meaning of Chapter 64H, Section 1(5), Company A must collect and pay over the sales or use tax on its sale of the computer, based on the retail selling price charged by Company B.

Very truly yours,


Commissioner of Revenue

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